



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA

19 JUL 2004

Office of the Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

SKY CONTROLS, INCORPORATED, a/k/a
DELTA AIR PARTS CO.
MARK SAFFORD HOLIDAY, a/k/a
MARK SAFFORD YOMTOB HOLIDAY, a/k/a
MARK SAFFORD YOMTOB
WILLIAM J. BRAY III
LINDA L. BRAY

On August 7, 2003, the Air Force suspended, and on August 29, 2003, superseded the suspensions of Sky Controls, Incorporated, a/k/a Delta Air Parts Co. (SCI), Mark Safford Holiday, a/k/a Mark Safford Yomtob Holiday, a/k/a Mark Safford Yomtob (Holiday), William J. Bray III (W. Bray), and Linda L. Bray (L. Bray) (collectively, "Respondents") from Government contracting or subcontracting and from directly or indirectly receiving the benefits of federal assistance programs.

Effective April 8, 2004, the Air Force proposed the debarments of SCI, Holiday, W. Bray, and L. Bray from Government contracting or subcontracting and from directly or indirectly receiving the benefits of federal assistance programs. The suspensions and proposed debarments were initiated pursuant to Federal Acquisition Regulation (FAR) Subpart 9.4.

By letters dated November 14, 2003, and May 28, 2004, Respondents, through counsel, submitted information and arguments in opposition to the suspensions and proposed debarments (the submissions). I have read and carefully considered the submissions and all the information in the administrative record.

INFORMATION IN THE RECORD

Information in the record indicates that at all times relevant hereto:

1. SCI was an aircraft parts supplier that was in the business of selling new and used aircraft parts.
2. Holiday was a shareholder, Director, and the President of SCI.
3. W. Bray was a shareholder, Director, the Senior Vice President, and General Manager (GM) of SCI.
4. L. Bray was a shareholder, Director, and the Secretary-Treasurer of SCI. She was married to W. Bray.

5. SCI was engaged in at least seven (7) contracts with the Air Force from 1990 to 2003 and supplied accessories and components for Air Force aircraft to include electrical motors, airframe structural components, and wheel and brake systems.
6. Between 1998 and 2001, Holiday instructed SCI employees to paint, repair, polish, or otherwise alter used aircraft parts so the parts could be represented and sold as new or new surplus parts. During this time SCI sold used parts as new or misrepresented parts to Government agents (the task force) involved in an investigation of the sale of used and defective aircraft parts. The total value of the used or misrepresented parts sold to the task force was \$9,514.10.
7. On March 5, 1999, W. Bray signed a certificate of conformance (COC) falsely indicating that tail rotor plugs and tripods sold to the task force were "new surplus." The COC also falsely indicated that the parts were manufactured by Bell Helicopter. In fact, the tripods were used and the tail rotor plugs were not manufactured by Bell Helicopter.
8. On May 1, 2003, a one-count Information was filed in the United States District Court for the Central District of California (the court) against SCI and Holiday. The Information alleged that beginning on a date unknown and continuing to or about January 4, 2001, SCI engaged in a scheme devised to defraud and to obtain money from purchasers of aircraft parts, by means of materially false and fraudulent pretenses, representations, and promises (18 USC § 1341, 2).
9. On May 1, 2003, SCI and Holiday entered guilty pleas to the Information. The court entered judgments and imposed sentences by order dated October 1, 2003. SCI was sentenced to three years probation, ordered to pay a \$400 special assessment, \$9,514.10 in restitution, and was fined \$6,000. Holiday was sentenced to three years probation, ordered to pay a \$100 special assessment, \$9,514.10 in restitution, and was fined \$1,000.

DISCUSSION

Respondents offer two arguments in opposition to their debarments. First, they acknowledge that the prior way of doing business needs to be changed to prevent a recurrence of the events resulting in the convictions of SCI and Holiday. The submission references a "Compliance Plan" and a superceding "Sky Controls Procedures" (collectively, "the plan"). My review of the plan has revealed that there does not appear to be any independent oversight or verification of the plan's execution by an impartial entity. The only means for employees to report violations of the plan is to notify management.¹ I have carefully considered the mitigative value of the plan and find it woefully inadequate in protecting the Government from the type of misconduct that led to the criminal convictions of SCI and Holiday.

Second, the submission includes a declaration by L. Bray stating that she does not have and will not have a role in determining the condition of parts, in bidding or quoting, or in the technical aspects of performance. This claim has no relevance with respect to the stated basis for

¹ The plan requires employees to report violations to the same management convicted of criminal behavior (Holiday) and accused of seriously improper conduct (W. Bray).

L. Bray's proposed debarment. L. Bray was proposed for debarment because of her affiliation with SCI as defined in FAR 9.403, and the imputation of SCI's criminal and seriously improper conduct to L. Bray pursuant to FAR 9.406-5(b). As a principal of SCI, L. Bray directly or indirectly could and can control SCI. Moreover, L. Bray and W. Bray are married, which is an indication of control as to make L. Bray an affiliate of W. Bray pursuant to FAR 9.406-1(b).

The fact that W. Bray falsified a COC is not in dispute. This conduct is of so serious and compelling a nature as to affect W. Bray's present responsibility, and provides a separate and independent basis for his debarment pursuant to FAR 9.406-2(c).

The criminal convictions of Holiday and SCI provide a separate basis for their debarments, pursuant to FAR 9.406-2(a)(3) and (5). Notwithstanding the plan, which is inadequate for the purpose of demonstrating present responsibility, there is nothing in the submission to indicate any remedial measures or mitigating factors with respect to SCI and Holiday's criminal conduct and W. Bray's seriously improper conduct.

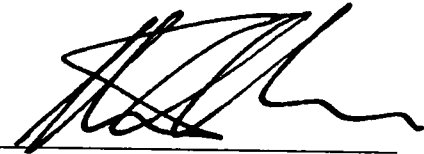
FINDINGS

1. The criminal convictions of SCI and Holiday provide separate bases for their debarments, pursuant to FAR 9.406-2(a)(3) and (5).
2. SCI, Holiday, and W. Bray's improper conduct is of so serious and compelling a nature that it affects their present responsibility to be Government contractors or subcontractors and provides separate bases for their debarments pursuant to FAR 9.406-2(c).
3. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates of a contractor. Holiday, W. Bray, L. Bray, and SCI are affiliates as defined in FAR 9.403 (affiliates), because directly or indirectly Holiday, W. Bray, and L. Bray control or can control SCI. The affiliation of Holiday, W. Bray, L. Bray, and SCI provides a separate basis for their debarments.
4. Pursuant to FAR 9.403, an "identity of interests among family members" is an indication of control so as to make one family member an affiliate of another. W. Bray and L. Bray are, therefore, affiliates of each other, because as husband and wife, at least indirectly each had the power to control the other. The affiliation provides a separate basis for the debarments of W. Bray and L. Bray, pursuant to FAR 9.406-1(b).
5. The criminal and seriously improper conduct of Holiday, and the seriously improper conduct of W. Bray may be imputed to SCI pursuant to FAR 9.406-5(a), because the conduct occurred in connection with Holiday and W. Bray's performance of duties for or on behalf of SCI, or with SCI's knowledge, approval, or acquiescence. The imputation of Holiday and W. Bray's conduct to SCI provides a separate basis for SCI's debarment.
6. Pursuant to FAR 9.406-5(b), the criminal and seriously improper conduct of SCI may be imputed to Holiday, W. Bray, and L. Bray, because as officers, directors, shareholders, partners, employees, or other individuals associated with SCI, they participated in, knew of, or had reason to know of SCI's criminal, fraudulent, and seriously improper conduct. The imputation of SCI's

criminal and seriously improper conduct provides a separate basis for the debarments of Holiday, W. Bray, and L. Bray.

DECISION

Pursuant to the authority granted by FAR Subpart 9.4, Defense FAR Supplement, subpart 209.4, and 32 C.F.R. Section 25, and based on the preponderance of the evidence contained in the administrative record and the findings herein, Sky Controls, Incorporated, a/k/a Delta Air Parts Co., Mark Safford Holiday, a/k/a Mark Safford Yomtob Holiday, a/k/a Mark Safford Yomtob, William J. Bray III, and Linda L. Bray are debarred for a period of three years from August 7, 2003, the date they were suspended. Their debarments shall terminate on August 6, 2006.

A handwritten signature in black ink, appearing to read 'S. Shaw', is written over a horizontal line.

STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)